

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 95-74

September 22, 1995

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: B. Allan Benson, Acting Associate General Counsel

SUBJECT: Unfair Labor Practice Hearings Scheduled for October

As you are aware, if there is neither a continuing resolution nor an appropriations bill funding our Agency for Fiscal Year 1996 in effect by midnight of September 30, 1995, a shutdown of Agency operations would have to begin on Monday, October 2. At this time, it appears that we may not know whether this will occur until September 30. Accordingly, in cooperation with the Division of Judges, we have formulated contingency plans for unfair labor practice hearings scheduled to be litigated in October. In doing so, we have attempted to balance the need for administrative simplicity, the fairness to all parties to have adequate notice and preparation time, and the desire to limit the number of postponements as much as possible.

In the event of a lack of funding as of October 1, employees would report to work on October 2 to begin the orderly shutdown of Agency operations. As part of these efforts, trials scheduled for hearing on October 2 within the metropolitan areas of Atlanta, New York, Philadelphia, San Francisco - Oakland and Washington, D.C. will open as scheduled and recess at the end of the day if not completed and no spending authorization has been enacted. Conducting these trials is consistent with the orderly shutdown of Agency operations since it would be very difficult, if not impossible, to timely notify all parties and witnesses of a postponement and there would be minimal travel costs to the Agency in proceeding to hearing on October 2.

As to trials scheduled to commence or resume on October 2 in other cities handled by the Atlanta, New York and San Francisco offices of the Division of Judges, if there is no funding for FY 1996 on or before Thursday, September 28, the parties should be immediately advised that

the trials will begin on Tuesday, October 3, assuming that there is funding by October 2.¹ Thereafter, if there is no funding on or before October 2, an order will issue by the Division of Judges postponing these trials indefinitely.

However, with respect to trials conducted by the Washington office of the Division of Judges which are scheduled to commence or resume on October 2 outside the aforementioned metropolitan areas, a decision will be made the week of September 25 as to the manner in which to proceed. We are hopeful that these trials can also be postponed for one day and can proceed on October 3 if there is funding legislation enacted on October 2. The parties should be notified of this possibility in order to secure their availability. You will be notified as to the manner in which these cases should be handled as soon as the decision is made.

If there is no funding by October 2, all trials scheduled to commence or resume on October 3 through 6 will be postponed by order issued by the Division of Judges.

Trials scheduled to commence the week of October 9 will be postponed indefinitely if there is no funding by Wednesday, October 4. Trials scheduled to commence on or after October 16 will be postponed if there is no funding by the second Friday preceding the scheduled opening of the trial. The postponements of all trials scheduled after October 9 will be effectuated by service of the blanket order which has been issued by the Division of Judges and which is attached hereto. After insertion of the case name and number, this order should be served by the Regions in cases scheduled through October 27 if there is no funding by October 2.² Since there is a real possibility that there will be a reduced opportunity to prepare for trials scheduled the week of October 9, attorneys should engage in as much trial preparation in September as possible.

There may be circumstances in particular trials, such as the distance from the Regional Office city or the estimated length of the trial, which warrant a departure from the procedures set forth above. In these cases, appropriate motions should be filed with the Division of Judges either

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¹ In order to secure the availability of the parties, Regions should notify them at this time that there is a possibility that these October 2 trials will be moved to October 3.

² Inasmuch as the preparation on October 2 of the service documents for all applicable trials could place a severe strain on the Regions' resources, the Regions might wish to prepare the necessary paperwork prior to October 2.

prior to October 2 or subsequent to the reopening of the offices after a shutdown.

If you have any questions, please contact me or your Assistant General Counsel.

B.A.B.

Attachment

cc: NLRBU